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STATE PRESCRIPTION DRUG PURCHASES. PRICING STANDARDS. INITIATIVE STATUTE.

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Michael Weinstein

[Residence Address Included on Elections Code Section 9001(b) Certificate of Residency Transmitted with January 30, 2015 Letter and Incorporated Herein by This Reference]

April 3, 2015

Ms. Ashley Johansson
Initiative Coordinator
Office of the Attorney General
1300 "I" Street, Suite 125
Sacramento, CA 95814-2919

RECEIVED
APR 06 2015

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Proposed Initiative 15-0009 as Amended

Dear Ms. Johansson:

Pursuant to California Elections Code section 9002(b) (and particularly section 9002(b)(4) and section 15 with regard to timing), by this letter I respectfully submit amendments to the proposed statewide initiative measure entitled "The California Drug Price Relief Act" (the "measure") (Initiative 15-0009). These amendments are reasonably germane to the theme, purpose, and/or subject of the measure as originally proposed and therefore are encouraged and permitted by the recent Ballot Initiative Transparency Act (Senate Bill 1253).

Further, I request that the Attorney General prepare a circulating title and summary using the amended language submitted herewith and incorporated herein by this reference. For ease of reference, I include both a "clean" copy and a "red-lined" copy of the amended language.

Please direct all inquiries and correspondence regarding the measure to:

Bradley W. Hertz, Esq.
The Sutton Law Firm
22815 Ventura Boulevard, #405
Los Angeles, CA 91364
Tel: 818/593-2949
Fax: 818/593-2948
Email: bhertz@campaignlawyers.com

Thank you for your time and attention to this matter.

Sincerely,



Michael Weinstein
Proponent

The California Drug Price Relief Act

The People of the State of California do hereby ordain as follows:

Section 1. Title.

This Act shall be known and may be cited as "The California Drug Price Relief Act" (the "Act").

Section 2. Findings and Declarations.

The People of the State of California hereby find and declare all of the following:

- (a) Prescription drug costs have been, and continue to be, one of the greatest drivers of rising health care costs in California.
- (b) Nationally, prescription drug spending increased more than 800 percent between 1990 and 2013, making it one of the fastest growing segments of health care.
- (c) Spending on specialty medications, such as those used to treat HIV/AIDS, Hepatitis C, and cancers, are rising faster than other types of medications. In 2014 alone, total spending on specialty medications increased by more than 23 percent.
- (d) The pharmaceutical industry's practice of charging inflated drug prices has resulted in pharmaceutical company profits exceeding those of even the oil and investment banking industries.
- (e) Inflated drug pricing has led to drug companies lavishing excessive pay on their executives.
- (f) Excessively priced drugs continue to be an unnecessary burden on California taxpayers that ultimately results in cuts to health care services and providers for people in need.
- (g) Although California has engaged in efforts to reduce prescription drug costs through rebates, drug manufacturers are still able to charge the State more than other government payers for the same medications, resulting in a dramatic imbalance that must be rectified.
- (h) If California is able to pay the same prices for prescription drugs as the amounts paid by the United States Department of Veterans Affairs, it would result in significant savings to California and its taxpayers. This Act is necessary and appropriate to address these public concerns.

Section 3. Purposes and Intent.

The People of the State of California hereby declare the following purposes and intent in enacting this Act:

- (a) To enable the State of California to pay the same prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs, thus rectifying the imbalance among government payers.

(b) To enable significant cost savings to California and its taxpayers for prescription drugs, thus helping to stem the tide of rising health care costs in California.

(c) To provide for the Act's proper legal defense should it be adopted and thereafter challenged in court.

Section 4. The California Drug Price Relief Act shall be codified by adding the following Section to the California Welfare and Institutions Code:

Section 14105.32. Drug Pricing

(a) Notwithstanding any other provision of law and insofar as may be permissible under federal law, neither the State of California, nor any state administrative agency or other state entity, including, but not limited to, the California Department of Health Care Services, shall enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, or any other discounts or credits, as determined by the California Department of Health Care Services, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

(b) The price ceiling described in subsection (a) above also shall apply to all programs where the State of California or any state administrative agency or other state entity is the ultimate payer for the drug, even if it did not purchase the drug directly. This includes, but is not limited to, California's Medi-Cal fee-for-service outpatient drug program, and California's AIDS Drug Assistance Program. In addition to agreements for any cash discounts, free goods, volume discounts, rebates, or any other discounts or credits already in place for these programs, the responsible state agency shall enter into additional agreements with drug manufacturers for further price reductions so that the net cost of the drug, as determined by the California Department of Health Care Services, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs. The requirements of this Section shall not be applicable to drugs purchased or procured, or rates developed, pursuant to or under any Medi-Cal managed care program.

(c) It is the intent of the People of the State of California that the State of California, and all state agencies and other state entities that enter into one or more agreements with the manufacturer of any drug for the purchase of prescribed drugs, shall implement this section in a timely manner, and to that end the State of California and all such state agencies and other state entities are required to implement and comply with this law no later than July 1, 2017.

(d) The State of California, and each and every state administrative agency or other state entity, may adopt rules and/or regulations to implement the provisions of this Section, and may seek any waivers of federal law, rule, and/or regulation necessary to implement the provisions of this Section.

Section 5. Liberal Construction.

This Act is an exercise of the public power of the People of the State of California for the protection of their health, safety, and welfare, and shall be liberally construed to effectuate its purposes.

Section 6. Conflicting Measures.

This Act is intended to be comprehensive. It is the intent of the People of the State of California that in the event this Act and one or more measures relating to the same subject shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this Act. In the event that this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

Section 7. Proponent Accountability.

The People of the State of California hereby declare that the proponent of this Act should be held civilly liable in the event this Act is struck down, after passage, in whole or in part, by a court of law for being constitutionally or statutorily impermissible. Such a constitutionally or statutorily impermissible initiative is a misuse of taxpayer funds and electoral resources and the Act's proponent, as drafter of the Act, must be held accountable for such an occurrence.

In the event this Act, after passage, is struck down in a court of law, in whole or in part, as unconstitutional or statutorily invalid, and all avenues for appeal have been exhausted, the proponent shall pay a civil penalty of \$10,000 to the General Fund of the State of California for failure to draft and sponsor a wholly constitutionally or statutorily permissible initiative law but shall have no other liability to any person or entity with respect to, related to, or arising from the Act. No party or entity may waive this civil penalty.

Section 8. Amendment and Repeal.

This Act may be amended to further its purposes by statute passed by a two-thirds (2/3) vote of the Legislature and signed by the Governor.

Section 9. Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

Section 10. Legal Defense.

The People of the State of California desire that the Act, if approved by the voters, and thereafter challenged in court, be defended by the State of California. The People of the State of California, by enacting this Act, hereby declare that the proponent of this Act have a direct and personal stake in defending this Act from constitutional or statutory challenges to the Act's validity. In the event the Attorney General fails to defend this Act, or the Attorney General fails to appeal an adverse judgment against the constitutionality or statutory permissibility of this Act, in whole or in part, in any court of law, the Act's proponent shall be entitled to assert its direct and personal stake by defending the Act's validity in any court of law and shall be empowered by the citizens through this Act to act as agents of the citizens of the State of California subject to the following conditions: (1) The proponent shall not be considered an "at-will" employee of the State of California, but the Legislature shall have the authority to remove the proponent from their agency role by a majority vote of each house of the Legislature when "good cause" exists to do so, as that term is defined by California case law; (2) The proponent shall take the Oath of Office under California Constitution, Article XX, §3 as an employee of the State of California; (3) The proponent shall be subject to all fiduciary, ethical, and legal duties prescribed by law; and (4) The proponent shall be indemnified by the State of California for only reasonable expenses and other losses incurred by the proponent, as agent, in defending the validity of the challenged Act. The rate of indemnification shall be no more than the amount it would cost the State to perform the defense itself.

Section 11. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters.

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

STATE PRESCRIPTION DRUG PURCHASES. PRICING STANDARDS. INITIATIVE

STATUTE. Prohibits state agencies from paying more for a prescription drug than the lowest price paid for the same drug by the United States Department of Veterans Affairs. Applies to any program where the state is the ultimate payer for a drug, even if the state does not purchase the drug directly. Exempts certain purchases of prescription drugs funded through Medi-Cal.

Fiscal impact: **It is the opinion of the Legislative Analyst and Director of Finance that the measure, if adopted, may result in a substantial net change in state or local finances.**

(15-0009.)